FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

Second Appeal No. 629/2006

Appeal	District :
Application No.	of 200
Writ petition	

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

CORAM : Smt. V. A. Naik, J.
DATED : February 13, 2007.

Heard Shri Shelat for the appellant.

By this second appeal, the appellant challenges the order passed by the District Judge, Nagpur on 27/6/2005 rejecting the application for review of the order passed by the 5th Additional District Judge, Nagpur, on 13/1/2005.

Application filed by the appellant under Section 72 of the Bombay Public Trusts Act was pending in the Court of 5th Additional District Judge, Nagpur. During the course of hearing, both the counsel gave a joint pursis at Exh.12 submitting therein that the matter be remanded to the Joint Charity Commissioner for deciding it afresh. It is observed in the judgment dated 13/1/2005 by the 5th Additional District Judge, Nagpur, that a joint pursis was moved with an aim to stop various litigations going on between the parties since long.

It is not in dispute that the appellant was

the applicant no.2 to the application under Section 72 of the Bombay Public Trusts Act, and was a recorded trustee who had filed a Change Report before the Assistant Charity Commissioner. It is the case of the appellant that the joint pursis exh.12 was filed by the counsel for the applicants and the non-applicants, and was also singed by the applicant no.1 and the non-applicants to the said proceedings. According to the appellant, he was not a signatory to the said pursis and the counsel for the appellant could not have signed the said pursis. According to the appellant, though a counsel has an implied authority to enter into a compromise on behalf of his client, the authority has to be exercised with due caution and only in exceptional circumstances. The 5th Additional District Judge, Nagpur, had, by the judgment and order dated 13/1/2005, remanded the matter to the Joint Charity Commissioner on the basis of the aforesaid joint pursis.

The appellant, being aggrieved by the aforesaid judgment and order passed by the 5th Additional District Judge, Nagpur, preferred a review application which was rejected by the order dated 27/6/2005. The appellant is challenging the said order in this second appeal.

Shri Shelat the learned counsel for the appellant argued that the authority of the counsel to

enter into a compromise on behalf of his client could be carved out only in exceptional circumstances, and the Courts should be slow in recording a compromise where the compromise pursis is not signed by all the parties to the litigation. According to Shri Shelat, since the said joint pursis was not signed by the appellant, and the counsel for the appellant had also not sought instructions from the appellant before signing the same on behalf of the appellant, the judgment and order dated 13/1/2005 ought to have been set aside by exercising the powers of review. The learned counsel relied on the decisions reported in **1992(1) SCC page 31, 2003 (6) SCC page 230** and **1998 Mh. L.J. Page 872**, to substantiate his submissions.

The submissions made on behalf of the appellant are not acceptable for the short reason that the joint pursis was not filed to compromise the lis between the parties and in fact, the joint pursis was filed for seeking a remand of the matter to the Joint Charity Commissioner for decision afresh. The District Judge has rightly considered the position that an advocate has an implied authority to compromise the matter on behalf of his client. In fact, the Court held that the Vakalatnama clearly authorises the counsel to enter into a compromise in the above matter. The District Judge referred to the relevant portion of the Vakalatnama which reads

as follows :

> "I/We authorize him on my/our behalf to enter into a compromise in the above matter, to execute any decree".

Hence the relevant portion of the Vakalatnama clearly shows that the counsel had authority to enter into a compromise on behalf of the appellant. In any case, the instant case is not a case where the whole lis was compromised. The District Judge has observed in the judgment and order dated 13/1/2005 that the counsel for the parties were heard at length and during the course of the arguments, a joint pursis was submitted seeking remand of the matter to the Joint Charity Commissioner for afresh decision on merits. Thus, in this case, it was necessary in the interest of justice to remand the matter. The Court further observed that the pursis was moved with an aim to stop various litigations going on between the parties since long. Hence in the instant case, it cannot be said that the judgment dated 13/1/2005 was liable to be set aside on the ground that the joint pursis was not signed by the appellant and the counsel for the appellant had also not sought instructions from the appellant before singing the joint pursis.

The reported judgments relied upon by the counsel for the appellant, are hardly of any assistance to the appellant's case. In the case

reported in 1992(1) SCC page 31, the lis between the parties was compromised and the parties agreed to draw a decree in terms of compromise. Similar were the facts in the case reported in 2003(6) SCC 230 wherein by the compromise pursis which was not signed by one of the parties to the litigation and which was signed by the counsel for the parties, the parties had agreed to dissolve the firm, to sell the assets thereof and to perform all the acts incidental thereto. In the aforesaid case, the Supreme Court had, therefore, observed that the review application ought to have been granted by the Court as only three out of four parties had signed the compromise pursis and the facts reveal that the agreement was not a lawful one. The facts in the case reported in 1988 Mh. L. J. 872 also reveal that the entire lis was compromised in terms of the pursis which was not signed by all the parties to the litigation.

As already stated herein above, present case is not one where the parties had compromised the lis and it is merely a case where after hearing the learned counsel for the parties at length, the counsel and two of the parties had agreed by signing the compromise prusis, to remand the matter to the Joint Charity Commissioner for deciding the matter on merits, afresh.

The provision of Order XXIII, Rule 3B of

C.P.C. would also not come to the aid of the appellant as the provisions of Order XXIII, Rule 3B C.P.C. stipulate that no agreement or compromise in a representative suit shall be entered into without the leave of the Court, and a compromise or agreement entered into without the leave of the Court so recorded, shall be void. The aforesaid provisions would not apply to the facts of the case though it is canvassed on behalf of the appellant that this matter pertains to the Trust and the suit was filed in the representative capacity. Provisions of Order XXIII Rule 3B of C.P.C. do not apply to the facts of the present case as the parties have not actually compromised the matter by the joint pursis.

For the aforesaid reasons, the judgment and order passed by the District Judge on 27/6/2005 calls for no interference. The District Judge has rightly rejected the review application.

Since no substantial question of law arises for consideration in this second appeal, second appeal is dismissed with no order as to costs.

JUDGE

RMP